GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

Public Services – Commercial Taxes Department – Allegation of acquisition of assets disproportionate to the known sources of income against Sri G.Appa Rao, the then Commercial Tax Officer, Tenali, Guntur District (Now Retired) – Sanction accorded for prosecution – Charge sheet filed in the Hon'ble Court of III Additional District & Sessions Judge for Anti Corruption Bureau Cases, Visakhapatnam on 28.02.2011 – Placed before the Tribunal for Disciplinary Proceedings instead of Prosecution – Charged Officer filed representation- Examined - Further action – Dropped - Orders – Issued.

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REVENUE (VIGILANCE-II) DEPARTMENT

G.O.Rt.No.11 **Dated:02-01-2019.**

Read the following:-

Ref:-1.From the DG,ACB, Rc.No.55/RCA-VSK/2006, dated:27-06-2006, (Preliminary Report).
2.Govt Memo No.27854/Vig.II(3)/2006- , Dated:12-07-2006.
3.From the DG,ACB, Rc.No.55/RCA-VSK/2006-1,dated:06-11-2008, (Final Report).
4.G.O.Ms.No.95, Rev(Vig.I) Dept, Dated: 04.02.2011.
5.Orders of the Hon'ble High Court,Dt:29.09.2014 in W.P.No.25477/2010.
6.Representation of Sri G.Appa Rao, Commercial Tax Officer,(Retired), dated: 26.11.2015.
7.G.O.Ms.No.422, Revenue (Vigilance-II) Department, dated:03.09.2016.
8. G.O.Rt.No.1100, Revenue (Vigilance-II) Department,dated:15.11.2016.
9.Representation of Sri G.Appa Rao, Commercial Tax Officer,(Retired), dated: 12.07.2018.

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O R D E R :

Whereas, in the reference 1st read above, the Director General, Anti-Corruption Bureau, Andhra Pradesh, has submitted preliminary report stating that on credible information that Sri Gedela Apparao S/o late Markendeyulu Commercial Tax Officer, Tenali-1, Guntur District amassed wealth by illegal and dubious means and thereby acquired assets disproportionate to his known sources of income in his name and in the name of his wife, children and others, a case in Cr.No.03/RC-ACB/VZM/2006 u/S 13(2) r/w 13(1)(e) of Prevention of Corruption Act,1988 has been registered on 16.03.2006. Pursuant to the search warrants issued by the III Additional District Sessions Judge-cum-Special Judge for Anti-Corruption Bureau cases, Visakhapatnam, simultaneous searches were conducted on 18.03.2006, on residential premises of Sri Gedela Apparao and his relatives and seized several files and other incriminating material pertaining to the assets, income and expenditure of Sri Gedela Apparao.

2. And whereas for the purpose of investigation, the check period has been taken from 14.10.1974 (i.e date of entry into service) to 18.03.2006 (i.e., the date of conducting of house searches).

3. Whereas in the reference 3rd read above, the Director General, Anti Corruption Bureau has furnished the final report to the Government, stating that during the course of searches and the material collected during the course of investigation revealed that during the check period, Sri Gedela Apparao S/o late Markendeyulu Commercial Tax Officer, Tenali-1, Guntur District acquired and was in possession of assets to a tune of Rs.45,74,744/-

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in his name and in his family members. The income of Sri Gedela Apparao, during the check period from all known sources of income comes to Rs.28,23,284/- and his total expenditure during the above said check period was calculated at Rs.18,79,509/-. The likely savings of Sri Gedela Apparao during the check period was Rs.9,43,775/-. Thus Sri Gedela Apparao was found in possession of disproportionate assets to his known sources of income Rs.36,30,969/- for which Sri Gedela Apparao could not give satisfactorily account for which lead to conclude that Sri Gedela Apparao acquired all assets by corrupt and dubious means. Government, after examining the final report, accorded sanction for prosecution of Sri Gedela Apparao S/o late Markendeyulu Commercial Tax Officer, Tenali-1, Guntur District vide reference 4th read above.

4. Whereas in the reference 5th read above, the Hon'ble High Court in its orders on W.P.No.25477/2014 filed by Sri Gedela Apparao, while disposing the Writ Petition, permitted Sri Gedela Apparao to make fresh representation and directed that the respondent i.e., Government shall examine the same in the light of facts and take appropriate decision. While enclosing the court orders, the Sri Gedela Apparao has made a representation in the reference 6th read above explaining the facts of the case and requested the Government to drop further action.

5. Whereas, Government after careful examination of the matter observed that in the present case the interpretation of the Director General, Anti-Corruption Bureau is based on probability if not presumption and such an interpretation does not stand the judicial scrutiny in cases of criminal prosecution, wherein the facts in the issue shall be proved beyond reasonable doubt. If there is any preponderance of probability in respect of acquisition of property in benami names on the part of the delinquent officer, the same can be got enquired by the Tribunal for disciplinary proceedings. Therefore, the Government has decided to entrust the case to Tribunal for disciplinary proceedings for inquiry instead of prosecution. Accordingly, Government in exercise of the powers conferred under Rule 3 Andhra Pradesh Civil Services (Disciplinary Proceedings) Rules, 1989, entrusted the case to Tribunal for disciplinary proceedings for inquiry instead of prosecution in the reference 7th read above, duly rescinding the orders issued in the reference 4th read above.

6. Whereas, in the same case, Government has dropped further action against the Charged Officer Sri Gedela Apparao, the then Commercial Tax Officer, Tenali, Guntur District (Now Retired) in respect of departmental action for violation of Conduct rules, 1964 vide reference 8th read above.

7. Whereas, in the reference 9th read above, the Accused Officer Sri Gedela Apparao, has filed a representation in which he has mainly contended among others that since he retired from service on 30.06.2013, there is no jurisdiction to entrust the case before the Tribunal for Disciplinary Proceedings. However, the Government have taking delay process and breakdown his financial interests, erroneously entrusted the case to Tribunal for Disciplinary Proceedings vide G.O.Ms.No.422, Revenue (Vigialnce.II) Department, 03.09.2016, instead of dropping further action against him, it clearly appears against the law. The Rule 9 (2) (b) of the Andhra Pradesh Revised Pension Rules 1980, provides that the departmental proceedings if not instituted while the government servant was in service they shall not be instituted save with the sanction of the government and shall not be in respect of any event which took place more than 4 years before such institution etc.,. He also stated that the Supreme Court in State of U.P. Vs. Sri Krishna Pander (A.I.R 1996 SC 1656) held that,

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> "Rule 351-A of Central civil services (pension) Rules 1972 indicates that if the officer caused pecuniary loss or committed embezzlement etc., due to misconduct or negligence or dereliction of duty then proceedings should also be instituted after retirement against the officer as expeditiously as possible. But the event of misconduct etc., which may have resulted in the loss of the government or embezzlement that is the cause for institution of proceedings, should not have taken place more than 4 years before the date of institution of proceedings. In other words, the departmental proceedings must be instituted before the lapse of 4 years from the date on which the event of misconduct etc., had taken place."

8. He has further contended that in view of the above provision and law laid down by the Hon'ble Supreme Court, disciplinary proceedings cannot be initiated against the retired government Employee if the event took place more than 4 years before initiation of the proceedings. He stated that in the instant case, the case registered against him in the year 2006, he retired from service on 30.06.2013. After lapse of three and half year (3½ year), Government have issued orders placed his case before the Tribunal for Disciplinary Proceedings vide G.O.Ms.No.422 Revenue (Vigilance.II) Department, dated.03.09.2016 as his case is not stands/jurisdiction in Tribunal for Disciplinary Proceedings. However no substituting enquiry was ordered or no charges were framed against him, as in which under Sub-Rule (i) & (ii) of 2(b) of Rule 9 of Revised Pension Rules'1980, the Departmental proceedings on a retired Government employee, if proposed to initiate, it shall be initiated within the stipulated period of (4) years by the Government only. Finally, he requested the Government to drop further action against him in the interest of natural justice.

9. Whereas, Government after examining the matter and following due procedure, observed that the Accused Officer in his representation has stated that pursuant to the prosecution orders, before the Hon'ble Court of Special Judge for Special Police Establishment & Anti Corruption Bureau cases, Visakhapatnam in Crl. MP No.378/2017 (CC No.12/2011), wherein it was categorically stated there is no positive evidence to say that he acquired the properties in the names of his family members and in benami names. The prosecution also admitted that there is bleak possibility of success in prosecution and not likely to result in conviction and hence pendency of prosecution is only a futile exercise in advancement of broader cause of administration. Accordingly, the petition filed by the prosecution examined and withdrawn the prosecution. The Accused Officer also stated that he has already suffered for 11 years and if de-novo enquiry on the same matter is allowed, then it will take 10 to 12 years. Further, he also contended that after lapse of 3 ½ years of his retirement, his case was entrusted to Tribunal for Disciplinary Proceedings. Further, the Special Judge for Special Police Establishment and Anti Corruption Bureau cases, Visakhapatnam in its order in Crl.M.P.No.278/2017, dated.12.4.2017 held that,

> 'It is clear from the record that the total income of the accused is Rs.28,23,284/- which is higher than the value of the assets found to be in his name and in the name of his relatives. i.e. Rs.24,52,538/-. When the value of the income is higher than the assets, it cannot be said that it is disproportionate assets found in possession of accused. I am of the opinion that there is no impediment to accord sanction to the prosecution for withdrawal of the case against the accused. In the result, the petition is allowed".

In view of the above observations and long pendency of the case, Government decided to take a lenient view in this case i.e., to drop further action against the Accused Officer Sri Gedela Apparao, the then Commercial

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Tax Officer, Tenali, Guntur District (Now Retired). Accordingly, Government hereby order to drop further action against the Accused Officer Sri Gedela Apparao, the then Commercial Tax Officer, Tenali, Guntur District (Now Retired), duly rescinding the orders issued in the reference 7th read above.

10. The Commissioner, Commercial Taxes Department, Andhra Pradesh, Vijayawada shall take necessary further action in the matter.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

Dr.D.SAMBASIVA RAO
SPECIAL CHIEF SECRETARY TO GOVERNMENT (CT, EXCISE & R&S)

To
Sri Gedela Apparao, the then Commercial Tax Officer, Tenali, Guntur District (Now Retired) (**through** the Commissioner of Commercial Taxes, Andhra Pradesh, Eedupugallu, Vijayawada).
The Commissioner of Commercial Taxes, Andhra Pradesh, Eedupugallu, Vijayawada.

Copy to :

The Director General, Anti Corruption Bureau, Andhra Pradesh, Pandit Nehru Bus Station, NTR Administrative Block, 2nd Floor, Vijayawada.
The Secretary to Vigilance Commissioner, Andhra Pradesh Vigilance Commission, Secretariat, Velagapudi, Guntur District.
SF/SC.

//FORWARDED :: BY ORDER//

SECTION OFFICER